SBCivil Writ Petition No.3749/2006

Thomas T.
Vs.
State of Rajasthan & Ors.

Date of Order :: 14th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Mahaveer Bishnoi, for the petitioner.
Mr. B.L.Tiwari, Dy..Govt.Advocate.

....

By this petition for writ the petitioner has sought a direction for the respondents to reimburse the expenses incurred in undergoing angioplasty on 6.7.2005 at Escorts Goyal Heart Centre, Jodhpur.

In brief, facts of the case are that on 5.7.2005 at 7.15 P.M. the petitioner suffered a severe chest pain and he was immediately taken to Government Bangar Hospital, Pali. The petitioner was diagnosed with acute coronary syndrome and was advised to undergo angioplasty. The petitioner was, therefore, brought to Jodhpur, however, looking to the fact that the facility of angioplasty was not available in Mahatma Gandhi Hospital, Jodhpur he was admitted to Escorts Goyal Heart Centre, Jodhpur on 6.7.2005. Looking to immediate need the angioplasty was taken on 6.7.2005, itself. For the purpose an expenses of Rs.2,39,302/- was incurred. The Government of Rajasthan refused to reimburse the expenses incurred in undergoing angioplasty on the count that Escorts

Goyal Heart Centre, Jodhpur is not an institution recognised by Government of Rajasthan to undergo angioplasty and to claim reimburse of the expenses thereof. Hence this petition for writ is preferred.

It is contended by counsel for the petitioner that the suffered severe chest pain on 5.7.2005 and on next day he was brought to Jodhpur and on the same day with a view to save his life angioplasty was undertaken at Escorts Goyal Heart Centre, Jodhpur. There was no time available with the petitioner to go to Jaipur to undergo angioplasty at S.M.S. Hospital. In the circumstances the denial of reimbursement of expenses incurred in angioplasty is arbitrary.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner instead of going to some Government Hospital for angiography choose to take treatment by a private hospital and for that he is not entitled to get reimbursement of the expenses. The fact that facility of angiography was not available at Mahatma Gandhi Hospital, Jodhpur or MDM Hospital, Jodhpur is not denied by the respondents.

Heard counsel for the parties.

The controversy involved in this petition for writ has already been decided by Division Bench of

this Court in the case of Shankerlal v. the State of Rajasthan & Ors., reported in 2000(3) WLC (Raj.), 585, holding as under:-

> "27.While considering the contention of the respondent State that the petitioner ought to have availed medical treatment at AIIMS at Delhi or obtained certification required under r.7(1) from any medical officer from AIIMS by treating him to be authorised medical attendant in terms of r.6(2) who could certify necessary vouchers. It is apt to recall following observations of a Division Bench of Punjab & Haryana High Court in C.W.P. NO.13493/92 titled as Sadhu R.Pall Vs. State of Punjab, decided on 6.10.1993 quoted with approval by the Supreme Court in Surjit Singh's case (supra):
>
> > "The respondents appear to have patently used excuses in refusing full reimbursement. When the factum of treatment and the urgency for the same has been accepted by the respondents by reimbursing the petitioner the expenses incurred by him, which he would have incurred in the AIIMS New Delhi. We cannot loose sight of factual situation in the AIIMS New Delhi i.e. with respect to the number of patients received there for heart problems. In such an urgency on cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved."
>
> This is complete answer to above contention.
>
> 28.There are two decisions of the Rajasthan High Court referred by the learned single

Judge in Khuman Singh Mehta versus State of Rajasthan and Ors. (1996 WLC (UC) 61) and Shyam Singh Vs. State of Rajasthan and Ors. (1996(2)WLC-441) wherein this Court issued a direction to reimburse the medical expenses incurred for securing medical attendance for special diseases outside Rajasthan in like circumstances for the reason that there was no facility of treatment of the disease from which the petitioner was suffering, in the State of Rajasthan are in consonance with above principles and cannot be distinguished. In fact, present case is in better footing inasmuch as the person needing medical treatment has been taken ill and needed such medical attendance while outside Rajasthan and at a place where specialised treatment for her ailment was available at an approved Institution recognised by State of Rajasthan in that behalf.

29.The ratio of these decisions fully applies to the facts of the present case wherein while the petitioner was in Delhi on leave, his wife suffered heart problem and was immediately taken to Escorts Heart and Research Centre, Delhi, which is recognised Hospital for specialised treatment by the State Govt., where his open heart surgery was made. Thus, it is clear that Escorts Heart and Research Institute is one of the recognised Hospital for specialised treatment, there is not escape from the conclusion that the State Govt. is liable to reimburse such expenses without insisting for certification from the authorised Medical Attendant or other Competent

Officer, when such a facility was not available in the State of Rajasthan. The claim could not be denied on the ground that because the petitioner instead of waiting in queue and spending time in seeking a clarification from a local hospital has decided to act with promptitude in the interest of self preservation by taking his wife immediately to an Institute approved by the State Govt.

30.Before closing we may notice one ancillary contention raised on behalf of respondent. It was stated that about diagnosis for treatment and certifying expense vouchers, no Doctor of Escorts Health Centre could be considered as Authorised Medical Attendant. The argument appears to be fallacious and founded on ignoring the distinction between function of certifying a patient to be taken to an approved Hospital or Institution outside Station for treatment and certifying the disease for which the patient has actually treated and medical attendance and treatment actually made available to such patient. So far as the treatment given at any approved institution or for that matter by any medical attendant is concerned, it follows his own diagnosis and prognosis. Actual treatment does not follow on the certificate issued under r.7(1). It depends on patient being examined at the Hospital or Institution where he is attendant for such treatment. The treatment or medical attendance made available at such institution follows assessments and diagnosis made at or at the instance of such hospital/institution. It is only on such assessment by the treating

agency that treatment follows. Therefore, medical attendance at only such institution can certify about the disease with which the treated patient suffered and treatment rendered at such institute as indoor/outdoor patient. The medical attendant of other institution or Hospital in such circumstance puts his counter signatures only for the purpose of authenticating it in accordance with Rules. However, such counter signing by the authenticated medical attendant cannot be by itself take the place of primary proof of diagnosis and treatment rendered by approved hospital or institution at which patient was attendant to. Cases are not wanting where notwithstanding certification by the prescribed authority under r.7(1), the approved institution has on their own assessment has found otherwise. Therefore, denial of reimbursement of expenses incurred on medical attendance and treatment bonafide and genuinely by the public servant for availing treatment for himself or any member of his family at recognised hospital/institution in the circumstances like the present case on such technical grounds shall be clearly arbitrary, unreasonable and unjust. The required formalities of counter signing the certificate/vouchers issued by such Institutions can always be cured by obtaining appropriate counter signatures from the competent Officer under the Rules and in the absence of doubt about genuiness of such certification, such authority will not be justified in refusing to countersign without satisfying his doubt."

In view of the fact that angioplasty was not available in any Government Hospital at Jodhpur, the petitioner, therefore, was having no option but to get himself treated at Escorts Goyal Heart Centre, Jodhpur. In view of it the petitioner is certainly entitled for reimbursement of the expenses incurred in undergoing angioplasty.

Accordingly, this petition for writ is allowed. The respondents are directed to make payment of expenses incurred in undergoing angioplasty at Escorts Goyal Heart Centre, Jodhpur.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.